IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6749 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

R. K. NAIR

Versus

STATE OF GUJARAT

Appearance:

MR BP TANNA for Petitioners

MS MANISHA LAVKUMAR, AGP for Respondents

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 22/01/2001

C.A.V. JUDGEMENT

#. The prayer of the petitioners in this petition is for a writ of mandamus declaring that the petitioners are covered by clause-161(1)(b) of B.C.S.R. with further direction to the respondents to retire the petitioners at the age of 60 years.

#. The brief facts giving rise to this petition are as under :-

The petitioner no.1 joined the service on 15-12-1950 as IV Grade Male Attendant in the Mental Hospital and was working on the date of the petition as Head Male Attendant. Petitioner no.2 joined the service on 15-5-1952 and on the date of the petition he was working as First Grade Male Attendant in the Mental Hospital. The petitioner no.1 was placed in the grade of Rs.210 - 270, which was revised to Rs.800 - 1500. While, the petitioner no.2 was placed in the grade of Rs.196 232, which was revised to Rs.750 - 940. The petitioners were classified to be placed in superior services though they were working in Class-IV. Their grievance is that, all other 23 categories which are considered as superior services born in Class-IV have been given benefit of higher pay scale but, not the petitioners. If, the petitioners were given higher pay scale in Class-III, they had no grievance. However, they were not given higher pay scale but, were treated in Class-III for the purposes of retirement and they were made to retire on attaining 58 years and not on attaining 60 years, which is normal age of superannuation for Class-IV employees.

#. Quoting various rules of B.C.S.R., the petitioners have pleaded that they are paid the salary of Class-IV servants and therefore they are governed by Rule-161(1)(b) of the B.C.S.R. and not by Rule-161(1)(a) of the B.C.S.R.

#. Counter affidavit has been filed, in which, the stand of the petitioners has been repudiated and it has been maintained that the petitioners are to be retired at the age of 58 years because, they fall in superior service class.

#. Shri BP Tanna, learned senior advocate for the petitioners and Ms. Manisha Lavkumar, learned AGP were heard and the rules applicable in the case were examined. So also, the counter affidavit and annexures supplied with the counter affidavit.

Rule-9(27) of the B.C.S.R. reads as under :-

> "Class-IV service means service performed by the Government servants included in Appendix-III and service remunerated in a time scale of pay the maximum of which does not exceed Rs.270=00 in the case on Government servants not so included."

#. "Superior service" is defined in Rule-9(54), which

means any kind of service which is not Class-IV. It is not disputed that the retirement age of the Government employees in Class-IV is 60 years, while that in Class-III is 58 years. There is no further classification between Class-IV and Class-III employees. Superior service has been defined no doubt under Rule-9(54) to mean any kind of service which is not Class-IV. But, this definition can not be interpreted to mean that, superior service in Class-IV is equivalent to Class-III employees of the State Government. This is a classification in Class-IV service itself for the obvious reason that some higher emoluments are given to persons belonging to superior service but, they are not automatically treated as employees of Class-III. For the purpose of Rule-9(54), superior service means any kind of service which is not Class-IV but, it does not say further that such superior service will be equivalent to Class-III. Consequently, the basic classification of Class-IV and Class-III has not been altered by this definition. Due to granting slightly higher emoluments to persons placed in superior service other than the persons actually placed in Class-IV service, it can not be said that superior service is to be treated equal to and at par with Class-III service.

#. Rule-161(1)(a) provides that, except as otherwise provided in the other clauses of this Rule, the date of compulsory retirement of a Government servant other than the Class-IV servants is the date on which he attains the age of 58 years. It is, therefore, amply clear that under this rule the age of retirement of a Government servant other than the Class-IV servants is 58 years. This rule further makes it clear that the Government servant placed in Class-III service will retire on attaining the age of 58 years.

#. Rule-161(1)(b) provides that, a Government servant in Class-IV service should be required to retire at the age of 60 years. He may not be retained in service after that age except with the sanction of the Government. Thus, from this rule, it is further clear that, a Government servant in Class-IV service shall retire at the age of 60 years but, he can be retained in service after that age only with the sanction of the Government. Thus, the normal retirement age of a Class-IV Government servant is 60 years under this rule.

#. The question for consideration now is, whether the petitioners were to be retired at the age of 60 years or at the age of 58 years. Admittedly, the petitioners have retired by now. Consequently, direction to the

respondents to retire the petitioners at the age of 60 years has now become redundant on account of change of events. The only question for consideration would be, what should be the age of retirement of the petitioners and whether they are entitled to any monetary benefits in case they have been retired at the age of 58 years.

##. From the above rules, it is clear that a Government servant in Class-IV has to retire on attaining the age of 60 years, whereas a Government servant in Class-III has to retire on attaining the age of 58 years. If, a Government servant in Class-IV service is considered in superior service within the meaning of Rule-9(54), it can hardly be accepted that such Government servant loses his basic lien in Class-IV service and automatically becomes entitled to be treated in Class-III services. Moreover, the petitioners were not treated in Class-III services for all purposes. The counter affidavit and the annexures referred by the learned AGP have been examined. The petitioner no.1 was working as a Head Male Attendant and the petitioner no.2 was working as a First Grade Male Attendant in the Mental Hospital. Head Male Attendant and First Grade Male Attendant in the Mental Hospital were reconsidered as superior for all purposes and were to be considered on Class-III posts as per B.C.S.R. Rule-9(27). It was also clarified that there should not be any change in the pay scale of these posts vide the first annexure to the counter affidavit. This clarification is totally arbitrary. If the attendants in the Mental Hospital were to be considered as Class-III employees, they were entitled to the salary of such employees and the rider that there should not be any change in the pay scale of these posts indicate that such employees were considered to be Class-IV employees and the so-called reconsideration was arbitrary and ornamental.

##. The next annexure to the counter affidavit shows that the grade of a Head Male Attendant prior to 1-6-1967 was Rs.95 - 2 - 105, which was revised to Rs.100 - 140 with effect from 1-6-1967. The grade for First Grade Male Attendant was in the scale of Rs.80 - 1 - 85 prior to 1-6-1967 and in the scale of Rs.90 - 110 after 1-6-1967. The next annexure shows that under exception-(1) to Rule-9(27), various Government servants were treated as superior for all purposes and Male Attendants were considered in superior services. The word "for all purposes" is illusory. If they were to be considered as superior for all purposes, they were entitled to get higher salary which was being given to Class-III employees. Next annexure is exception-(2) to

Rule-9(27-31), which interalia provides that the Mental Hospital Attendants are treated as superior for all purposes except travelling allowance. This exception is also unintelligible. If, such employees were to be treated as superior for all purposes, there was no reason not to grant them salary, which was being given to Class-III employees. The clarification in the first annexure to the counter affidavit that there should not be any change in the pay scales of Male Attendants in the Mental Hospital, is also arbitrary and illusory. The definition of superior service, in my opinion, does not in any way authorize the petitioners to be treated in Class-III services. If, they were placed in superior services, it simply meant that they were to get some more emoluments in a different grade than that actually paid to Class-IV employees. Thus, there was further classification within Class-IV employees for the purpose of granting a different scale to persons belonging to superior services and not that they automatically become entitled to be treated as Class-III employees.

##. Under Rule-9(27), the pay scale of the petitioner no.1 was Rs.210 - 270, which did not exceed Rs.270=00. Likewise, the petitioner no.2 was in the scale of Rs.196 - 232, hence the maximum of his pay scale did not exceed Rs.270=00. Consequently, the petitioners were to be treated as Class-IV employees within the meaning of Rule-9(27) and creation of further classification of superior service did not entitle them to claim the benefit of Class-III employees. If, they are to be treated as Class-IV employees or in superior service then Class-IV servants have to be retired at the age of 60 years and not at the age of 58 years. Since, they were retired at the age of 58 years, they are entitled to all monetary benefits for a period of 2 years, eventhough, they did not work during the aforesaid period of 2 years. They did not voluntarily retire, nor they willingly abstained from work. Consequently, they are entitled to all consequential monetary benefits of pay, dearness allowance, etc.

##. Since the action of the respondent was illegal, the petitioners are entitled to get interest at the rate of 10% per annum over the monetary dues which has accrued to them. The petition, therefore, succeeds in part and is partly allowed. The respondents are directed to pay to the petitioners monetary benefits for a period of 2 years with interest at the rate of 10% per annum from the date of their retirement to the accrued date of retirement at 60 years. There shall be no order as to cost.

Dated : 22/01/2001. [D.C. Srivastava, J.]

/sakkaf